

9-058A006



RECORDATION NO.

16214

FILED 1425

**Istel Rail Corporation**

55 Francisco Street  
San Francisco, California 94133  
(415) 984-4000  
(415) 781-1035 Fax

February 22, 1989 FEB 27 1989 - 12 30 PM

**INTERSTATE COMMERCE COMMISSION**

Hon. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Date 2/27/89  
Fee \$ 13

ICC Washington, D. C.

Re: Schedule No. 1 to Master Lease Agreement No. 2235-00 dated as of February 17, 1979, between Itel Rail Corporation, Itel Railcar Corporation and Railtex, Inc.

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in three (3) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$13 recordation fee.

Please record this Schedule under Master Lease Agreement No. 2235-00 dated as of February 17, 1989, between Itel Rail Corporation, Itel Railcar Corporation and Railtex, Inc., which is being filed with the ICC simultaneously this date.

The parties to the aforementioned instrument are listed below:

Itel Rail Corporation and  
Itel Railcar Corporation (Lessor)  
55 Francisco Street  
San Francisco, California 94133

Railtex, Inc. (Lessee)  
4901 Broadway, Suite 231  
San Antonio, Texas 78209

This Master Lease Agreement describes the terms and conditions under which equipment set forth in subsequent schedules thereto is leased.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

*Patricia Schumacker*

Patricia Schumacker

FEB 27 1989 -12 30 PM

LOT NO. 2235-01

## SCHEDULE NO. 1 INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE No. 1 ("Schedule") to that certain Lease Agreement, (the "Agreement") made as of February 17, 1989 between ITEL RAIL CORPORATION and ITEL RAILCAR CORPORATION, severally, as lessors, and RAILTEX, INC., as lessee ("Lessee") is made this 17th day of February, 1989, between ITEL RAILCAR CORPORATION ("Lessor") and Lessee.

Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule No. 1, except that the term "Cars" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech Desig	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
LO	2929 Cu. Ft., 100-Ton Covered Hopper	TRAX <u>5600-</u> <u>5639</u>	41'1"	9'11"	-----	-----	40

3. Lessor shall, at its expense, deliver the Cars to a location to be designated by Lessee and the term of the Agreement with respect to each Car described in this Schedule shall commence at 12 noon on the date such Car is delivered ("Delivery") and shall continue as to all of the Cars described in this Schedule for three (3) years from the earlier of (i) the date on which the last Car described in this Schedule was delivered or (ii) sixty (60) days from the date the first Car described in this Schedule was delivered (the "Initial Term"). Upon the delivery of the final Car, Lessor shall provide Lessee with a Certificate of Delivery, in the form of Exhibit A attached hereto, including the Delivery date for each Car and the expiration date of the Agreement with respect to the Cars described in this Schedule. Unless Lessee, within fifteen (15) days of such notice, demonstrates to the satisfaction of Lessor that such date is incorrect, then Lessee shall be deemed to have concurred to such date.
4. Within five (5) days after Lessor has given Lessee notice that Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point specified in the notice. Cars so inspected and accepted by Lessee and any Cars which Lessee does not inspect within five

(5) days of such notice of delivery shall, upon Delivery thereof, be deemed accepted and subject to the Agreement.

5. As provided in Subsection 3.C. of the Agreement, Lessor may, at its expense replace any or all Cars ("Replacement Cars") upon not less than thirty (30) days prior written notice from Lessor to Lessee, and such Replacement Cars shall be two (2) pocket, 100-ton, 2929 cubic feet to 3200 cubic feet covered hoppers.
6.
  - A. Lessee shall perform the registration and record keeping required for the Cars described in this Schedule, as described in Section 4 of the Agreement. Lessee shall register each Car in UMLER as TRAX cars.
  - B. Lessee shall submit to Lessor a monthly report in complete AAR format for all sums due to Lessee from Lessor for such calendar month with respect to the maintenance of the Cars, including sums due for maintenance performed by third parties and for maintenance performed by Lessee. Lessor shall pay to Lessee all sums due pursuant to this Subsection within thirty (30) days after receipt of such monthly maintenance report and bill.
7. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except as set forth in Section 5 of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement or substituted for Exhibit B thereto. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.
8. Lessee assumes responsibility for and agrees to pay, defend, hold harmless and indemnify Lessor and its successors against all taxes, fees, levies, imposts, duties or withholdings of any nature, together with penalties, fines or interest thereon, imposed on, incurred by, asserted against or imposed upon: (1) the Cars; (2) the lease, sublease or delivery of the Cars; and (3) the revenues earned by the Cars, including, but not limited to, mileage charges and/or car hire revenues earned during the Term of the Agreement; provided, however, that Lessee shall not be responsible for U.S. taxes on income imposed on Lessor. Lessee will comply with all state and local laws requiring filing of ad valorem tax returns associated with the Cars.
9.
  - A. The fixed rent ("Fixed Rent") shall be  
per Car per month for each full calendar month ("Month") during the Term. The Fixed Rent for any Car which is not subject to the Agreement for an entire Month shall be prorated at  
per day for such Car during such Month.  
The Fixed Rent shall be due and payable regardless of any claimed abatement, reduction or offset, except as otherwise provided herein.
  - B. For any Car undergoing repairs for which Lessor is responsible, the Fixed Rent shall abate on the fifth (5th) day after a Car is placed into a repair facility and shall not recommence until the day such

Car is delivered to Lessee or otherwise returned to service. In case of such abatement, the Term may, upon mutual agreement, be extended for a period of time to be determined by dividing the aggregate number of days the Fixed Rent for the Cars subject to this Schedule was abated by the number of Cars subject to this Schedule on the date Lessor performs such calculation.

- C. Lessee shall pay to Lessor the Fixed Rent, and all taxes reimbursable to Lessor as additional rent hereunder, on the last day of each month during the Term.
- 10. A. Except as to any loss, liability, claim, damage or expense which is attributable to the act or omission of Lessor, or for which a railroad has assumed full responsibility and satisfies such responsibility, Lessee agrees to defend, indemnify and hold Lessor harmless from any and all claims, losses, damages, liabilities, costs, and expenses (including attorney's fees) with respect to, caused by, or arising out of the Cars which are occasioned by the fault of Lessee, occur while the Cars are in Lessee's possession or control or in Mexico.
  - B. Except as provided in Subsection 10.A. above, and except for those claims, losses, damages, liabilities and expenses for which Lessee shall be responsible as set forth in this Agreement, Lessor shall indemnify and hold Lessee harmless from any and all loss, damage or destruction of or to the Cars, ordinary wear and tear excepted.
  - C. The indemnities and assumptions of liability contained in this Agreement shall survive the expiration or termination of the Agreement.
- 11. Upon the expiration or termination of the Agreement with respect to the Car(s) described in this Schedule, Lessee shall, at its expense, return such Car to Lessor by delivering it to Lessor at such maintenance, storage or terminal facility as Lessor designates to Lessee in writing. Lessee shall, upon Lessor's request, provide to Lessor all records with respect to the movement of the Cars.
  - 12. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

13. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

ITEL RAILCAR CORPORATION

By: *DP Hayes*  
Title: *President*  
Date: *February 17, 1989*

RAILTEX, INC.

By: *Rafael B. Kennedy*  
Title: *VP Leasing Div*  
Date: *1/31/89*

EXHIBIT A

CERTIFICATE OF DELIVERY DATE

Exhibit A to Schedule No. 1 dated as of \_\_\_\_\_ to Lease Agreement dated as of \_\_\_\_\_, by and between ITEL RAILCAR CORPORATION ("Lessor") and RAILTEX, INC. ("Lessee").

CAR REPORTING  
MARKS AND NUMBER

DELIVERY DATE

The last day of the Term for the above referenced Cars shall be

\_\_\_\_\_.

ITEL RAILCAR CORPORATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT B

Running Repairs: Covered Hoppers

Angle Cocks	Wheel Assemblies
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Outlet Gate Repair (Not Gate Replacement)
Hand Brakes	
Brake Beams and Levers	Hatch Cover Repair (Not Replacement of Hatch Cover)
Truck Springs	

STATE OF CALIFORNIA       )  
                                           ) ss:  
 COUNTY OF SAN FRANCISCO )

On this 17th day of February, 1989, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of Itel Railcar Corporation, that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sharon L. Van Fossan  
 Notary Public



STATE OF TEXAS       )  
                                           ) ss:  
 COUNTY OF ~~BEXAR~~ HARRIS )  
                                           as

On this 3RD day of FEBRUARY, 1989, before me personally appeared Ralph G. Kennedy, to me personally known, who being by me duly sworn says that such person is Vice President Leasing Division of Railtex, Inc. that the foregoing Schedule No. 1 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shirley J. Friday  
 Notary Public

SHIRLEY J. FRIDAY  
 Notary Public State of Texas  
 My Commission Expires 3/28/90